

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address STEPHEN L. BURTON (State Bar No. 113748) Law Offices of Stephen L. Burton 15260 Ventura Boulevard Suite 640 Sherman Oaks, California 91403 Telephone: (818) 501-5055 Facsimile: (818) 501-5849 <input checked="" type="checkbox"/> Attorney for Plaintiff(s): PHILIP BRIAN REYES <input type="checkbox"/> Plaintiff(s) appearing without attorney	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION	
In re: PHILIP BRIAN REYES Debtor(s).	CASE NO.: 2:12-BK-32705-VZ ADVERSARY NO.: CHAPTER: 13
PHILIP BRIAN REYES Plaintiff(s), vs. BANK OF AMERICA, N.A. Defendant(s).	DEBTOR'S COMPLAINT TO AVOID JUNIOR LIEN ON PRINCIPAL RESIDENCE [11 U.S.C. § 506(a),(d); FRBP 3012] TO BE FILED CONCURRENTLY WITH LBR FORM F 7004-1 SUMMONS AND NOTICE OF STATUS CONFERENCE AND FORM B-104 ADVERSARY PROCEEDING COVER SHEET

NAME OF CREDITOR HOLDING JUNIOR LIEN (Defendant): BANK OF AMERICA, N.A.

A. Introduction: This is an adversary proceeding brought by the Plaintiff, PHILIP BRIAN REYES, in order to determine the value of a claim secured by a lien on principal residence of Plaintiff which the estate has an interest, and to avoid the junior deed of trust, mortgage or other encumbrance (Lien) of Defendant, pursuant to 11 U.S.C. § 506.

B. Jurisdiction: This adversary proceeding arises out of and is related to the above-captioned chapter 13 case now pending in United States Bankruptcy Court. The complaint involves a "core" proceeding pursuant to 28 U.S.C. § 157(b)(2). The court has jurisdiction in this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1334; and General Order No. 266 of the United States District Court for the Central District of California.

This form is optional. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

C. **Venue:** Venue for this adversary proceeding is proper in this court pursuant to 28 U.S.C. § 1409(a).

D. **General Allegations:**

1. **Property at Issue:** Plaintiff owns real property (Property), which is the principal residence of Plaintiff, described below, encumbered by a lien held by Defendant:

Street Address: 25428 MAGNOLIA LANE

Unit Number: _____

City, State, Zip Code: STEVENSON RANCH, CA 91381

Legal description or document recording number (including county of recording):

☒ See attached page

2. **Grounds for Avoidance of Junior Lien:**

- a. As of 06/29/2012, the Property is subject to the following liens in the amounts specified securing the debt against the Property, which the Plaintiff seeks to have treated as indicated:

i. JP MORGAN CHASE BANK, N.A. in the amount of \$ 1,003,489.00 :

ii. BANK OF AMERICA, N.A. in the amount of \$ 225,840.55
☒ is ☐ is not to be avoided;

iii. _____ in the amount of \$ _____
☐ is ☐ is not to be avoided;

☐ See attached page for additional lien(s).

b. As of 06/29/2012, Property is worth no more than \$ 840,000.00.

c. As a result, Defendant's claim related to the Lien on the Property is ☒ wholly ☐ partially unsecured.

E. **Claim For Relief:**

1. Pursuant to 11 U.S.C. § 506(a), Defendant's claim as of the date of filing is unsecured.
2. Pursuant to 11 U.S.C. § 506(d) the Defendant's Lien may be avoided.

F. **Wherefore, Plaintiff prays for the following:**

1. The Property is valued at no more than \$ 840,000.00.
2. The Defendant's claim related to the Lien shall be allowed as a non-priority general unsecured claim in the amount per the filed Proof of Claim.

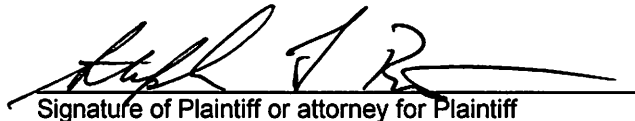
This form is optional. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

3. The avoidance of Defendant's Lien is contingent upon ☐ Debtor's completion of the chapter 13 plan, or ☒ Debtor's receipt of a chapter 13 discharge.
4. The Defendant shall retain its lien in the junior position for the full amount due under the corresponding note and lien in the event of either the dismissal of Debtor's chapter 13 case, the conversion of Debtor's chapter 13 case to any other chapter under the United States Bankruptcy Code, or if the Property is sold or refinanced prior to: ☐ Debtor's completion of the chapter 13 plan, or ☒ Debtor's receipt of a chapter 13 discharge.
5. In the event that the holder of the first position lien or any senior lien on the Property forecloses on its interest and extinguishes Defendant's lien rights prior to: ☐ Debtor's completion of the chapter 13 plan, or ☒ Debtor's receipt of a chapter 13 discharge,
6. ☐ See attached continuation page for additional provisions.

Date:

1/7/13

Respectfully submitted,


Signature of Plaintiff or attorney for Plaintiff

STEPHEN L. BURTON, ESQ.

Printed name of Plaintiff or attorney for Plaintiff

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

15260 VENTURA BLVD., SUITE 640
SHERMAN OAKS, CA 91403

A true and correct copy of the foregoing document entitled: **DEBTOR'S COMPLAINT TO AVOID JUNIOR LIEN ON PRINCIPAL RESIDENCE [11 U.S.C. § 506(a),(d); FRBP 3012]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (date) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.


☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

_____	NANCY JAIMES	_____
Date	Printed Name	Signature

This form is optional. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

ADVERSARY PROCEEDING COVER SHEET (Instructions on Page 2)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS PHILIP BRIAN REYES	DEFENDANTS BANK OF AMERICA, N.A.	
ATTORNEYS (Firm Name, Address, and Telephone No.) STEPHEN L. BURTON, ESQ. 15260 VENTURA BLVD., SUITE 640 SHERMAN OAKS, CA 91403	ATTORNEYS (If Known) PROBER & RAPHAEL PO BOX 4365 WOODLAND HILLS, CA 91365-4365	
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Remove Lien of Defendant Pursuant to 11 U.S.C. Section 506(a)		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input checked="" type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
(continued next column)		
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR PHILIP BRIAN REYES		BANKRUPTCY CASE NO. 2:12-bk-32705-VZ	
DISTRICT IN WHICH CASE IS PENDING CENTRAL	DIVISIONAL OFFICE LOS ANGELES	NAME OF JUDGE VINCENT ZURZOLO	
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE	
SIGNATURE OF ATTORNEY (OR PLAINTIFF)			
DATE 1/7/2013	PRINT NAME OF ATTORNEY (OR PLAINTIFF) 		

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not presented by an attorney, the plaintiff must sign.

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address STEPHEN L. BURTON (State Bar No. 113748) Law Offices of Stephen L. Burton 15260 Ventura Boulevard Suite 640 Sherman Oaks, California 91403 Telephone: (818) 501-5055 Facsimile: (818) 501-5849 <i>Attorney for Plaintiff</i>		FOR COURT USE ONLY	
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION			
In re: PHILIP BRIAN REYES Debtor(s).		CASE NO.: 2:12-BK-32705-VZ	
		CHAPTER: 13	
		ADVERSARY NUMBER:	
PHILIP BRIAN REYES Versus BANK OF AMERICA, N.A. Plaintiff(s) Defendant(s)		SUMMONS AND NOTICE OF STATUS CONFERENCE IN ADVERSARY PROCEEDING [LBR 7004-1]	

TO THE DEFENDANT: A Complaint has been filed by the Plaintiff against you. If you wish to defend against the Complaint, you must file with the court a written pleading in response to the Complaint. You must also serve a copy of your written response on the party shown in the upper left-hand corner of this page. The deadline to file and serve a written response is _____. If you do not timely file and serve the response, the court may enter a judgment by default against you for the relief demanded in the Complaint.

A status conference in the adversary proceeding commenced by the Complaint has been set for:

Hearing Date: _____	Place:
Time: _____	<input checked="" type="checkbox"/> 255 East Temple Street, Los Angeles, CA 90012
Courtroom: _____	<input type="checkbox"/> 3420 Twelfth Street, Riverside, CA 92501
	<input type="checkbox"/> 411 West Fourth Street, Santa Ana, CA 92701
	<input type="checkbox"/> 1415 State Street, Santa Barbara, CA 93101
	<input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills, CA 91367

You must comply with LBR 7016-1, which requires you to file a joint status report and to appear at a status conference. All parties must read and comply with the rule, even if you are representing yourself. You must cooperate with the other parties in the case and file a joint status report with the court and serve it on the appropriate parties at least 14 days before a status conference. A court-approved joint status report form is available on the court's website (LBR form F 7016-1.1) with an attachment for additional parties if necessary (LBR form F 7016-1.1a). If the other parties do not cooperate in filing a joint status report, you still must file with the court a unilateral status report and the accompanying required declaration instead of a joint status report 7 days before the status conference. The court may fine you or impose other sanctions if you do not file a status report. The court may also fine you or impose other sanctions if you fail to appear at a status conference.

**KATHLEEN J. CAMPBELL
CLERK OF COURT**

Date of Issuance of Summons and Notice of Status Conference in Adversary Proceeding: _____

By: _____
Deputy Clerk

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **SUMMONS AND NOTICE OF STATUS CONFERENCE IN ADVERSARY PROCEEDING [LBR 7004-1]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

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☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date

Printed Name

Signature